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Court of Appeals  
Division II  
State of Washington  
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NO. 52231-4-II

IN THE COURT OF APPEALS  
FOR THE STATE OF WASHINGTON  
DIVISION II

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STATE OF WASHINGTON,

Respondent,

v.

DERRICK LYONS

Appellant.

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ON APPEAL FROM THE  
SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR LEWIS COUNTY

The Honorable James Lawler, Judge

SUPPLEMENTAL BRIEF OF APPELLANT

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**A. SUPPLEMENTAL ASSIGNMENT OF ERROR**

1. The sentencing court erred by imposing a \$200 criminal filing fee, \$100.00 DNA collection fee, and interest accrual provision following the Supreme Court's decision in *State v. Ramirez*<sup>1</sup> and after enactment of House Bill 1783. Clerk's Papers (CP) 180-81.

**B. ISSUES PERTAINING TO SUPPLEMENTAL ASSIGNMENT OF ERROR**

1. Under the Supreme Court's decision in *Ramirez*, should the \$200.00 criminal filing fee and \$100.00 DNA collection fee be stricken from appellant's judgment and sentence?

2. Do recent statutory amendments affecting LFOs require remand to strike the imposition of interest accrual on non-restitution LFOs?

**C. STATEMENT OF THE CASE**

**1. Procedural facts:**

At sentencing, the court stated: "I will impose the mandatory minimums given the criminal history and the other cases that I'm just going to take judicial notice that there is substantial financial penalties involved on other cases given your age." RP (4/16/18) at 37-38. The court imposed a \$500.00 crime victim assessment, \$200.00 criminal filing fee, and \$100.00 DNA collection fee. RP (4/16/18) at 37; CP 180-81.

The judgment and sentence states "[t]he financial obligations

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<sup>1</sup> 191 Wn.2d 732, 426 P.3d 714 (2018).

imposed in this Judgment shall bear interest from the date of the Judgment until payment in full, at the rate applicable to civil judgments.” CP 181.

Appellant’s opening brief was filed October 26, 2018. Counsel was granted leave to file a supplemental brief on May 7, 2019.

**D. ARGUMENT**

**1. THE COURT ERRED IN IMPOSING \$200.00 FILING FEE, \$100.00 DNA FEE, AND INTEREST ACCRUAL**

*a. Recent statutory amendments prohibit discretionary costs for indigent defendants*

A court may order a defendant to pay legal financial obligations (LFOs), including costs incurred by the State in prosecuting the defendant. RCW 9.94A.760(1); RCW 10.01.160(1), (2). The legislature recently amended former RCW 36.18.020(2)(h) in *Engrossed Second Substitute House Bill 1783, 65th Leg., Reg. Sess.* (Wash. 2018) (HB 1783) and as of June 7, 2018, trial courts are prohibited from imposing the \$200 criminal filing fee, former RCW 36.18.020(2)(h), on defendants who are indigent at the time of sentencing. *Laws of 2018*, ch. 269, § 17; *State v. Ramirez*, 191 Wn.2d 732, 426 P.3d 714 (2018). The amendment applies prospectively and is applicable to cases pending on direct review and not final when the amendment was enacted. *Ramirez*, 191 Wn.2d at 739, 746-50.

*House Bill 1783* amended “the discretionary LFO statute, former

RCW 10.01.160, to prohibit courts from imposing discretionary costs on a defendant who is indigent at the time of sentencing as defined in RCW 10.101.010(3)(a) through (c).” *Ramirez*, 191 Wn.2d at 746 (citing *Laws of 2018*, ch. 269, § 6(3)); see also RCW 10.64.015 (“The court shall not order a defendant to pay costs, as described in RCW 10.01.160, if the court finds that the person at the time of sentencing is indigent as defined in RCW 10.101.010(3)(a) through (c).”). *HB 1783* establishes that the \$200 criminal filing fee is no longer mandatory if the defendant is indigent. The Supreme Court in *Ramirez* concluded the trial court impermissibly imposed discretionary LFOs and a \$200 criminal filing fee and remanded for the trial court to amend the judgment and sentence to strike the improperly imposed LFOs. *Ramirez*, 191 Wn.2d at 750.

In this case, the court imposed a \$500 crime victim fund assessment, which *HB 1783* retains as a mandatory LFO. RCW 7.68.035(1)(a). *State v. Catling*, No. 95794-1, filed April 18, 2019, \_\_\_ P.3d \_\_\_, 2019 WL 1745697 at \*3. The court, however, also imposed the \$200.00 criminal filing fee against Mr. Lyons. RP (4/16/18) at 37; CP 180. As amended in 2018, subsection (3) of RCW 10.01.160 now states, “[t]he court shall not order a defendant to pay costs if the defendant at the time of sentencing is indigent as defined in RCW 10.101.010(3) (a) through (c).” RCW

10.01.160(3). Subsection .010(3) defines “indigent” as a person who (a) receives certain forms of public assistance, (b) is involuntarily committed to a public mental health facility, (c) whose annual after-tax income is 125% or less than the federally established poverty guidelines, or (d) whose “available funds are insufficient to pay any amount for the retention of counsel” in the matter before the court. RCW 10.101.010(3).

The trial court also imposed a \$100.00 DNA collection fee. CP 181. The legislature recently amended RCW 43.43.7541 to direct the DNA fee not be imposed upon an individual who had previously provided a DNA sample. Mr. Lyons has multiple felony convictions from Oregon. CP 177. ORS 137.076 requires convicted felons to provide a blood or buccal sample.<sup>2</sup> Therefore his DNA would presumably have been collected in his

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<sup>2</sup> ORS 137.076 provides in relevant part:

(1) This section applies to any person convicted of:

- (a) A felony;
- (b) Sexual abuse in the third degree or public indecency;
- (c) Conspiracy or attempt to commit rape in the third degree, sodomy in the third degree, sexual abuse in the second degree, burglary in the second degree or promoting prostitution; or
- (d) Murder or aggravated murder.

(2) When a person is convicted of an offense listed in subsection (1) of this section:

(a) The person shall, whether or not ordered to do so by the court under paragraph (b) of this subsection, provide a blood or buccal sample at the request of the appropriate agency designated in paragraph (c) of this subsection.

(b) The court shall include in the judgment of conviction an order stating that a blood or buccal sample is required to be obtained at the request of the appropriate agency and, unless the convicted person lacks the ability to

prior Oregon felony matters.

Under Ramirez, the DNA fee must be considered a discretionary LFO, which may not be imposed on an indigent defendant. *Ramirez*, 191 Wn.2d at 721-22.

***b. Mr. Lyons was and remains indigent***

Here, Mr. Lyons was represented by court-appointed counsel, and shortly after sentencing the court found him indigent and unable to contribute to the costs of his appeal while ordering the appeal to proceed solely at public expense. CP 200. The court found that Mr. Lyons had substantial LFO obligations from his previous convictions. RP (4/16/18) at 37-38. Thus, the record indicates that Mr. Lyons was indigent under RCW 10.101.010(3) at the time of sentencing.

***c. The trial court erred by imposing interest accrual LFOs***

Mr. Lyons also challenges the interest accrual on non-restitution LFOs assessed in Section 4.3 of the judgment and sentence. CP 181. The 2018 legislation eliminated the accrual of interest on non-restitution LFOs. The judgment and sentence states that financial obligations imposed by it shall

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pay, that the person shall reimburse the appropriate agency for the cost of obtaining and transmitting the blood or buccal sample. If the judgment sentences the convicted person to probation, the court shall order the convicted person to submit to the obtaining of a blood or buccal sample as

bear interest from the date of the judgment until payment in full at the rate applicable to civil judgments. CP 181. The 2018 legislation states that as of its effective date “penalties, fines, bail forfeitures, fees, and costs imposed against a defendant in a criminal proceeding shall not accrue interest.” As amended, RCW 10.82.090 now provides:

(1) Except as provided in subsection (2) of this section, restitution imposed in a judgment shall bear interest from the date of the judgment until payment, at the rate applicable to civil judgments. As of the effective date of this section [June 7, 2018], no interest shall accrue on non-restitution legal financial obligations.

See *Laws of 2018*, ch. 269.

The interest accrual provision in the judgment and sentence pertaining to non-restitution LFOs should be stricken.

#### **E. CONCLUSION**

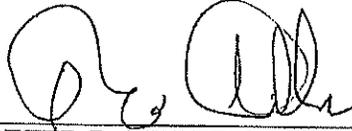
For the reasons stated above, Mr. Lyons respectfully requests this Court remand for resentencing with instructions to strike the discretionary costs of the criminal filing fee, DNA collection fee, and the interest accrual provision to the extent it applies to non-restitution LFOs.

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a condition of the probation.

DATED: May 8, 2019.

Respectfully submitted,  
THE TILLER LAW FIRM

Handwritten signature of Peter B. Tiller, consisting of a stylized 'P' and 'T'.

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CERTIFICATE OF SERVICE

The undersigned certifies that on May 28, 2019, that this Appellant's Supplemental Brief was sent by the JIS link to Mr. Derek M. Byrne, Clerk of the Court, Court of Appeals, Division II, 950 Broadway, Ste. 300, Tacoma, WA 98402, Sara Beigh, Lewis County Prosecuting Attorney's Office and copies were mailed by U.S. mail, postage prepaid, to the following:

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This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Centralia, Washington on May 28, 2019.



PETER B. TILLER

**THE TILLER LAW FIRM**

**May 28, 2019 - 9:28 AM**

**Transmittal Information**

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**Comments:**

Motion to file Correct Supplemental Brief in place of incorrect Supplemental Brief filed on May 8th.

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